

**THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY**
Caption in Compliance with D.N.J. LBR 9004-1(b)

**MCELROY, DEUTSCH, MULVANEY
& CARPENTER, LLP**

David P. Primack, Esq.
Bar I.D. No. 230612016
1300 Mt. Kemble Avenue
P.O. Box 2075
Morristown, NJ 07962
Telephone: (302) 300-4515
E-mail: dprimack@mdmc-law.com

Attorneys for Wedgewood Hills, Inc.

In re:

BED BATH & BEYOND INC., *et al.*,¹

Debtors.

Chapter 11
(Jointly Administered)

Case No. 23-13359 (VFP)

**WEDGEWOOD HILLS, INC.'S OBJECTION TO THE CURE
AMOUNT IN DEBTORS' SALE MOTION**

Wedgewood Hills, Inc., as managing agent for Allan A. Sebanc and Beverly M. Sebanc, Trustees of the Sebanc Family Trust, under Trust Agreement dated March 14, 2002, and Kenneth D. McCloskey as Trustee of the GST Exempt Bypass Trust under the McCloskey Family Trust Agreement dated May 24, 2007 ("Landlord"), by its undersigned counsel, states its Objection to the Cure Amount and to adequate assurance of future performance of the Successful Bidder, pursuant to the *Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases* (the "Notice") [ECF Doc. No. 714] as follows:

¹ The last four digits of Debtor Bed Bath & Beyond Inc.'s tax identification number are 0488. A complete list of the Debtors in these chapter 11 cases and each such Debtor's tax identification number may be obtained on the website of the Debtors' proposed claims and noticing agent at <https://restructuring.ra.kroll.com/bbby>. The location of Debtor Bed Bath & Beyond Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is 650 Liberty Avenue, Union, New Jersey 07083.

1. Landlord and Bed Bath & Beyond, Inc. are parties to a Lease dated May 12, 2017, as amended, for premises located at 50 West 1200 South Street, Orem UT (Store #292) (the “Premises”).

2. The Notice lists Landlord at item #315, with no Cure Amount (which presumably means a \$0.00 cure amount).

3. Landlord filed a proof of claim on June 15, 2023 in the amount of \$545,733.40.

4. Debtor has generally been paying its rent on a timely basis. However, Debtor remains responsible for Additional Rent under the Lease, which includes but is not limited to payment of real property taxes and insurance. Debtor is billed directly for real property taxes, which are billed in arrears. Upon information and belief, Debtor will owe taxes for 2023. All unpaid taxes and insurance premiums are a component of the Cure Amount that is necessary to be paid in order for Debtor to assume the Lease and assign it pursuant to 11 U.S.C. §365(b).

5. Debtor was, and remains responsible for various costs for upkeep of the Premises, including landscaping. Debtor has ongoing responsibilities for the Premises, which include landscape maintenance. To the extent Debtor has not complied with its responsibilities and related costs in this regard, these obligations are part of any Cure Amount that is necessary to be paid in order for Debtor to assume the Lease and assign it pursuant to 11 U.S.C. §365(b).

6. Further, Landlord does not have sufficient information on the Successful Bidder, and therefore reserves its right to object to adequate assurance of future performance pursuant to 11 U.S.C. §365(b).

7. Landlord does not object generally to the assumption and/or assignment of the Lease, provided its above-stated concerns are satisfactorily addressed.

8. Landlord reserves the right to withdraw its Objection or supplement this Objection as to the Cure Amount; depending on the timing of the actual assumption and cure, the amount owed to Landlord may change based on any unpaid post-petition Lease obligations.

Wherefore, Landlord request this Court enter an order which conditions the assumption of the Lease on the Debtor's prompt payment of all amounts due at the time of assumption of the Lease, that the Debtor provide adequate assurance of future performance in accordance with 11 U.S.C. §365, require the Debtor to continue to comply with all of their obligations under the Lease, and grant such other and further relief as the Court deems appropriate.

**McELROY, DEUTSCH, MULVANEY
& CARPENTER, LLP**

Dated: June 20, 2023

/s/ David P. Primack

David P. Primack, Esq. (#230612016)
300 Delaware Avenue, Suite 1014
Wilmington, DE 19801
Telephone: 302-300-4515
Facsimile: 302-645-4031
E-mail: dprimack@mdmc-law.com

-and-

Julie Beth Teicher (*pro hac vice* to be filed)
MADDIN, HAUSER, ROTH
& HELLER, P.C.
28400 Northwestern Highway, 2nd Floor
Southfield, MI 48034
Telephone: 248-354-4030
E-mail: jteicher@maddinhauser.com

Counsel to Wedgewood Hills, Inc.